

### **REMARKS**

Claims 1, 2, 4, 9, 11, 12, and 14-28 remain pending in the application. Reconsideration in light of the remarks presented herein is respectfully requested. No new matter has been entered.

### **RESPONSE TO ARGUMENTS**

Applicant formally requested a phone interview with the Examiner on April 16, 2007 to gain a better understanding of the analysis presented in the Response to Arguments section of the previous Office Action. The request was denied. At that time, the Examiner invited the Applicant to address any concerns regarding the analysis in a formal Office Action Response. Accordingly, Applicant herein addresses the concerns.

#### **Office Action's 1<sup>st</sup> Response to Arguments**

The Office Action asserts that the Applicant argued that *Eldering* does not disclose "repeatedly sending data", (Office Action Page 2, Lines 6-10). Applicant respectfully submits that the Office action has mischaracterized Applicant's argument.

Applicant argued that Claims 1, 2, 4, 9, 11, 12, 14, and 23 recite "a transmission (step) for repeatedly transmitting scripts" and that the Office Action of June 15, 2006 has incorrectly interpreted "a transmission (step) for repeatedly transmitting scripts" to mean "repeatedly sending data", (Office Action Response, November 15, 2006, Page 32, Lines 7-10). Applicant does not argue that *Eldering* does not disclose "repeatedly sending data". Applicant argues that *Eldering* does not disclose or suggest "a transmission (step) for repeatedly transmitting scripts".

In the Office Action of February 8, 2007 once again asserts that the recitation "a transmission (step) for repeatedly transmitting scripts" can be interpreted as "repeatedly sending data."

(b) repeatedly transmit the scripts in a time period when the program data of the specific program is transmitted (column 8, Lines 34-36), Column 10, Lines 37-45; Note: sending data whenever the channel is idle is interpreted as repeatedly sending data. (Office Action, Page 8, Lines 1-4, Emphasis added).

Applicant is unable to follow the Office Action's above stated reasoning. Applicant submits that the conclusion presented (i.e. "sending data" anticipates "repeatedly sending scripts") is overreaching.

Applicant respectfully requests that the rejection be withdrawn or an explanation of how "sending data" and "repeatedly sending scripts" are equivalent limitations.

The Office Action admits that the invention may be performing in a different manner (from *Eldering*), (Office Action, Page 2, Lines 8-10). Applicant agrees.

The Office Action then states that the difference is not made clear in the claims (Office Action, Page 2, Lines 8-10). Applicant is unaware of any claims that are not clear and definite. Applicant also notes that the Office Action has not rejected any claims under 35 U.S.C §112 paragraph 2. Applicant respectfully requests that the rejection be withdrawn or that an explanation be provided pointing out the unclear claim language.

### **Office Action's 2<sup>nd</sup> Response to Arguments**

The Office Action asserts that the Applicant argued that the instructions taught by *Suzuki* and script disclosed by the applicant differs, (Office Action Page 2, Lines 11-16). Applicant believes that Office Action has mischaracterized Applicant's argument.

Applicant argued that claims 1, 2, 4, 9, 11, 12, 14 and 23 recite a script generation unit (step) that instructs the receiver to reproduce program data of the specific program stored in a storage unit (step) and that this limitation is not disclosed or suggested by *Suzuki*, (Office Action Response, November 15, 2006, Page 32, Line 17 – Page 33, Line 2).

The Office Action of February 8, 2007 once again presents the same analysis that the recited limitation is anticipated by *Suzuki*. The analysis appears to indicate that *Suzuki* may be interpreted as being “a set of instructions for an application” and that “a set of instructions for an application” anticipates Applicant’s script generation (step) unit that instructs the receiver to reproduce program data of the specific program stored in a storage unit (step), (Office Action Page 27, Lines 16-21). Applicant respectfully submits that “a set of instructions for an application” is not the same as a “script generation unit” that instructs the receiver to reproduce program data of the specific program stored in a storage unit (step).

Moreover, the Office Action analysis relied on to assert that *Suzuki* teaches a set of instructions for an application is far reaching and convoluted. The analysis provided is a hard to follow *non-sequitur* even with the benefit of improper hindsight.

The Office Action asserts *Suzuki* teaches:

*Suzuki* discloses a system with script generating means for generating (b) when receiving a reproduction instruction, a script instructing the receiving the apparatus to reproduce the program data of the specific program in a case where the program data of the specific program has been stored in the storage unit (column 23, Lines 22-25; Note a script is interpreted as being a set of instructions for an application and the instructions taught by *Suzuki* are interpreted as being a set of instructions for an application. (Office Action Page 27, Lines 16-21).

The Office Action derives this teaching without providing any supporting analysis from the following text from *Suzuki*.

Upon receiving the reproduction instruction, the temporary memory device reads the corresponding digital video data of the program and supplies it to the digital decoding circuit 319, (*Suzuki*, Column 23, Lines 22-25).

Applicant submits that *Suzuki*’s teaching of “upon receiving the reproduction instruction, the temporary memory device reads the corresponding digital video data of the program and supplies it to the digital decoding circuit 319” does teach or suggest a “script generation (step)

unit” that instructs the receiver to reproduce program data of the specific program stored in a storage unit (step).

Applicant respectfully requests that the rejections be withdrawn or a more thorough analysis to support the rejections be provided.

#### **Office Action’s 4<sup>th</sup> Response to Arguments**

The Office Action asserts that Applicant argued that *Eldering* discloses a video on demand system (Office Action, Page 3, Lines 4-8). Applicant believes that this is a mischaracterization of Applicant’s argument. Applicant does use the fact that *Eldering* discloses a device that has a video on demand feature to highlight the differences between Applicant’s invention and the *Eldering*.

Applicant argued that Claims 1, 2, 4, 9, 11, 12, 14, and 23 include a control unit (step) for controlling the transmission and that *Eldering* device is controlled by a viewers input (Office Action Response, November 15, 2006, Page 33, Lines 13-20). Applicant cites text explaining how *Eldering’s* device operates and points out that a device that operates like *Eldering’s* is essentially a video on demand (VOD) system.

The Office Action questions Applicant’s assertion that *Eldering’s* device operates like a VOD, (Office Action, Page 3, Lines 4-8). Applicant believes this is an accurate assertion and backs up this assertion with a teaching from *Eldering*:

The increased bandwidth also enables **video on demand** services that are essentially high bandwidth unicast (as illustrated in Figure 1). (*Eldering*, Column 3, Lines 66-67, emphasis added).

#### **Office Action’s 8<sup>th</sup> Response to Arguments**

The Office Action asserts that the word “script” is not descriptive enough to distinguish over *Eldering’s* “program map” (Office Action, Page 4, Lines 1-4).

Applicant submits that a “script” and a “program map” are two entirely different elements. The terms “script” and “program map” are well known terms commonly used by those of ordinary skill in the art. A script is not a program map and a program map is not a script.

Applicant points out that the Office Action interprets script to mean “a set of instructions for an application”.

Note a script is interpreted as being a set of instructions for an application and the instructions taught by Suzuki are interpreted as being a set of instructions for an application. (Office Action Page 27, Lines 16-21).

A program map is certainly not “a set of instructions for application.

Accordingly, Applicant is unsure of why the Office Action asserts the word “script” is not descriptive enough to distinguish over a program map. Applicant respectfully requests that an analysis be provided or the rejections be withdrawn.

#### **Office Action’s 9<sup>th</sup> Response to Arguments**

The Office Action asserts that Applicant argues that *Eldering* does not teach the reproduction time periods as claimed (Office Action, Page 4, Lines 6-10).

Applicant argued a transmission unit wherein the reproduction time period of the specific program is the same as a broadcast time of a commercial is not disclosed or suggested by *Eldering*’s disclosure of television commercial broadcast at 29.5 minutes and 88.5 minutes. (Office Action Response, Page 34, Line 23, Page 35, Line 6).

Applicant fails to understand the Office Action’s analysis. The Office Action seems to suggest that *Eldering* could be adapted to have a reproduction time period like Applicant’s. Applicant submits that adapting *Eldering* to operate like Applicant’s invention is not taught suggested or motivated by anything in *Eldering*. The construction of Applicant’s invention *Eldering* with other elements not disclosed in *Eldering* can be only performed with the benefit of improper hindsight.

VSI is unable, however, to point to any specific teaching or suggestion for making this combination. VSI instead relies on what it presumes is the level of knowledge of one of ordinary skill in the art at the time of the invention to supply the missing suggestion to combine. In the first place, the level of skill in the art is a prism or lens through which a judge or jury views the prior art and the claimed invention. This reference point prevents these deciders from using their own insight or, worse yet, hindsight, to gauge obviousness. Rarely, however, will the skill in the art component operate to supply missing knowledge or prior art to reach an obviousness judgment. See *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 312-13 (Fed. Cir. 1983) ("To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher."). Skill in the art does not act as a bridge over gaps in substantive presentation of an obviousness case, but instead supplies the primary guarantee of objectivity in the process. See *Ryko Mfg. Co. v. Nu-Star, Inc.*, 950 F.2d 714, 718, 21 U.S.P.Q.2d 1053, 1057 (Fed. Cir. 1991).

Applicant therefore respectfully requests that the rejections be withdrawn or that a more thorough explanation of the analysis be provided.

**Claim Rejections 35 U.S.C. § 102 and Claim Rejections 35 U.S.C. § 103**

Claims 24, 25 and 28 were rejected under 35 U.S.C. §102 as being anticipated by *Eldering* (U.S. Pat No. 6,615,039).

Claims 1, 2, 4, 9, 11, 12, 14-23, 26 and 27 were rejected under 35 U.S.C. §103(a) as being anticipated by *Eldering* in view of *Suzuki* (U.S. Pat. No. 6,615,039).

Applicant presented thorough arguments for the patentability of each of the claims in the previous Office Action. Applicant is unable to understand many of the responses to the previous arguments. Applicant has formally presented what Applicant believes are misunderstandings in the response to the arguments. Accordingly, Applicant respectfully requests that the rejections be withdrawn. If the rejections are to be maintained, Applicant requests that the a more thorough

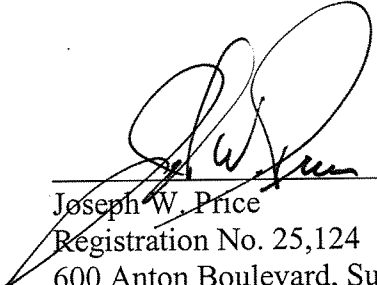
explanation of the response to the arguments be provided in light of the remarks presented above.  
Applicant also requests an additional opportunity to respond.

In view of the above comments and the further clarification set forth in the current claims, it is believed the case is in condition for allowance and early notification of the same is requested.

If the Examiner believes a telephone interview will assist in the prosecution of this application, the undersigned attorney can be contacted at the listed phone number.

Very truly yours,

**SNELL & WILMER L.L.P.**



---

Joseph W. Price  
Registration No. 25,124  
600 Anton Boulevard, Suite 1400  
Costa Mesa, California 92626-7689  
Telephone: (714) 427-7420  
Facsimile: (714) 427-7799